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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 DIEAUKA Y. BRADLEY,

8 Plaintiff,

9 v.

10 TODD TERHAR,

11 Defendant.  
12

Case No. C08-5499 FDB/KLS

ORDER TO SHOW CAUSE

13 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §  
14 636(b)(1), Local Rules MJR 3 and 4, and Federal Rule of Civil Procedure 72. The case is before the  
15 Court upon review of Plaintiff's complaint. After reviewing the Complaint and balance of the record, the  
16 Court finds and orders as follows:

17 A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745  
18 F.2d 1221, 1228 (9<sup>th</sup> Cir. 1984). When a complaint is frivolous, fails to state a claim, or contains a  
19 complete defense to the action on its face, the court may dismiss an *in forma pauperis* complaint before  
20 service of process under 28 U.S.C. § 1915(d). *Noll v. Carlson*, 809 F.2d 1446, 1448 (9<sup>th</sup> Cir. 1987) (*citing*  
21 *Franklin v. Murphy*, 745 F.2d 1221, 1227 (9<sup>th</sup> Cir. 1984)).

22 To state a claim under 42 U.S.C. § 1983, a complaint must allege that the conduct complained of  
23 was committed by a person acting under color of state law and that the conduct deprived a person of a  
24 right, privilege, or immunity secured by the Constitution or laws of the United States. *Parratt v. Taylor*,  
25 451 U.S. 527, 535 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327 (1986). Section  
26 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are present.  
27 *Haygood v. Younger*, 769 F.2d 1350, 1354 (9<sup>th</sup> Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

28 Plaintiff must also allege facts showing how individually named defendants caused or personally

1 participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir.  
2 1981). A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory  
3 responsibility or position. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694 n.58  
4 (1978). A theory of *respondeat superior* is not sufficient to state a § 1983 claim. *Padway v. Palches*, 665  
5 F.2d 965 (9th Cir. 1982).

6 Although complaints are to be liberally construed in a plaintiff's favor, conclusory allegations of  
7 the law, unsupported conclusions, and unwarranted inferences need not be accepted as true. *Id.* While the  
8 court can liberally construe plaintiff's complaint, it cannot supply an essential fact an inmate has failed to  
9 plead. *Pena*, 976 F.2d at 471 (*quoting Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th  
10 Cir. 1982)).

11 In his Complaint, Plaintiff purports to sue Todd Terhar, a Tacoma City Police Officer, for  
12 collection of an arbitration award. (Dkt. # 1-2). Plaintiff alleges that on September 20, 2005, he was  
13 awarded a judgment in arbitration in Case No. 04-2-10335-1, in the amount of \$16,150.93 against Officer  
14 Terhar. Plaintiff alleges that Officer Terhar was found to be at fault by his superiors in the Tacoma Police  
15 Department and Internal Affairs for one-half the sum awarded. *Id.*, p. 3. Plaintiff seeks enforcement of  
16 one-half of the amount of the arbitration judgment, or \$8,075.47, against Officer Terhar, through this  
17 Section 1983 action. *Id.*, pp. 3-4.

18 Plaintiff has failed to state a cognizable cause of action under 42 U.S.C. § 1983 in that he has  
19 failed to allege conduct depriving him or a right, privilege, or immunity secured by the Constitution or  
20 laws of the United States. *See, e.g., Parratt*, 451 U.S. at 535. Plaintiff's remedy, if any, is to enforce his  
21 judgment in the state venue where he received his arbitration award.

22 Due to the deficiencies described above, the court will not serve the complaint. Plaintiff shall file  
23 an amended complaint curing, if possible, the above noted deficiencies, or show cause explaining why  
24 this matter should not be dismissed **October 3, 2008**. The amended complaint must carry the same cause  
25 number case number as this one. If an amended complaint is not timely filed or if plaintiff fails to  
26 adequately address the issues raised herein, the Court will recommend dismissal of this action as frivolous  
27 pursuant to 28 U.S.C. § 1915 and the dismissal will count as a "strike" under 28 U.S.C. § 1915(g).

28 Plaintiff is further advised that an amended pleading operates as a *complete* substitute for an

1 original pleading. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9<sup>th</sup> Cir. 1992) (citing *Hal Roach Studios,*  
2 *Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9<sup>th</sup> Cir. 1990) (as amended), *cert. denied*, 506 U.S.  
3 915 (1992). Thus, if Plaintiff chooses to file an amended complaint, the Court will not consider his  
4 original complaint.

5 The Clerk is directed to send Plaintiff the appropriate forms that he may file an amended  
6 complaint. The Clerk is further directed to send a copy of this Order and a copy of the General Order to  
7 Plaintiff.

8 Dated this 3rd day of September, 2008.

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11 Karen L. Strombom  
12 United States Magistrate Judge  
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